time.[103] Several parties question both the consumer benefit and demand associated with selective blocking possibilities.[104] Some commenters report that even in areas where some selective blocking is available for intrastate services, subscribers have not chosen to take advantage of the option.[105]

59. Several parties, all LECs, voice opposition to a federal tariffing requirement, contending that tariffing at the state level is appropriate for end user services offered in connection with local exchange service and, in fact, has proven effective in practice. They insist that dual federal-state tariffs would be confusing, and that no substantive advantages would be achieved through mandatory federal tariffs.[106]

60. Decision. We are adopting the proposed blocking rule virtually unchanged.[107] We are requiring that LECs file their pay-per-call blocking tariffs with this Commission. LECs that have already filed such provisions in their state tariffs may file similar provisions in federal tariffs, providing that the state tariffs meet the minimal standards established by the TDDRA. This

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103 Comments of Bell Atlantic at 6 (AIN "will not be ubiquitous for several years at the very least, even in the networks of the larger carriers"); Comments of CBT at 3-4 (plans to have AIN available in "late 1994 time frame").

104 Comments of Bell Atlantic at 6; Comments of BellSouth at 4-5; Comments of CA at 4-5; Comments of U S West at 22.

105 Comments of CA at 4-5 (in California, "virtually no" subscribers have chosen selective blocking options; Comments of Pacific Bell at 6 (as of February 1993, 97% of residential subscribers choosing blocking selected a total block).

106 Comments of Bell Atlantic at 7; Comments of BellSouth at 6; Comments of NYNEX at 3; Comments of SNET at 6; Comments of US West at 18, n.38; Comments of Pacific Bell at 7-8; Comments of SWBT at 4; Comments of Sprint at 14.

107 We reject some commenters' proposals for alternate blocking arrangements. See n.97, supra. The Commission has already determined that a blocking system whereby an affirmative subscriber response is necessary to secure access to 900 services thwarts the federal purpose of promoting unrestricted access to interstate services and nothing in the TDDRA diminishes that purpose. In the Matter of Petition for an Expedited Declaratory Ruling Filed by National Association for Information Services, Audio Communications, Inc., and Ryder Communications, Inc., 8 FCC Rcd 698 (1993), petitions for recon. pending. Separately, we observe that Bell Atlantic's previous offering of free blocking was apparently undertaken pursuant to our requirement for that service and provides no basis for relieving a LEC of the statutory requirement of a 60 day "free block" period. Finally, the TDDRA clearly requires that commercial subscribers receive free blocking during the 60 day period.

should alleviate the LECs' concern that dual federal and state tariffs would be confusing.

61. The fact that 900 blocking is accomplished through a local switch or offered as an adjunct to local exchange service does not preclude federal jurisdiction where the provision is an integral part of an interstate service.[108] While we do not dispute the general effectiveness of state-tariffed pay-per-call blocking provisions, the TDDRA specifically establishes as federal law requirements pertaining to an underlying service that is overwhelmingly interstate. Federal tariffs specifying the terms and conditions under which LECs offer the mandated 900 blocking service will enhance our ability to enforce the requirements of the TDDRA.

62. Nonetheless, we agree with parties who have asserted that the blocking options contained in Section 64.1508 represent minimal standards which carriers or states may expand upon if such expansion does not interfere with a federal purpose. Thus, for example, states that wish to mandate more generous terms under which subscribers may obtain free blocking or carriers that wish to take such action voluntarily are not precluded by the terms of Section 64.1508 from doing so. As we found in the 900 Services Order, state blocking requirements which differ from our own do not automatically warrant preemption in the absence of interference with federal regulation or a federal purpose.[109]

63. We are not requiring selective blocking of interstate pay-per-call services. We conclude that selective blocking options for interstate pay-per-call services are not technically or economically feasible at this time.[110] The record in this proceeding demonstrates that wholesale switch modifications or replacements would be necessary to accomplish the full ten digit screening necessary to accomplish a service-specific block. Moreover, even if such upgrades were to be made, we agree with those commenters who note that selective blocking would be an inefficient use of switch capacity, especially given the dearth of evidence indicating any appreciable demand for such service. Similarly, we see no justification for compelling LECs to accelerate their incorporation of AIN technology or devote such capabilities to the screening functions necessary to implement selective blocking. As commenters have indicated, the earliest date at which any carrier expects to introduce AIN technology is over one year away, and widespread availability among smaller carriers may not occur for several years beyond that time. Any regulatory requirements necessitating the deployment of such technology would be especially burdensome for small LECs.[111] We believe that it would be unrealistic and

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108 National Association of Regulatory Utility Commissioners v. FCC, 746 F. 2d 1492, 1498 (D.C. Cir. 1984).

109 6 FCC Rcd at 6181.

110 The lone assertion by VRS that IXCs and IPs are capable of providing selective blocking does not justify imposition of a broad blocking requirement beyond that specified in the TDDRA.

111 See Reply Comments of NTCA at 4.

unwarranted to impose upon carriers an obligation to offer services which are dependent upon certain technical capabilities not yet fully available.

I. Disclosure and Dissemination of Pay-Per-Call Information (Section 64.1509)

64. The TDDRA clearly specifies the information disclosure and dissemination obligations that the Commission must by rule impose upon common carriers who assign telephone numbers for pay-per-call purposes.[112] The statute maintains and expands the disclosure obligations contained in our existing pay-per-call regulations.[113] Thus, under our proposed rule, IXCs would continue to be required to disclose the name, address, and customer service telephone number of any IP whose pay-per-call programs can be accessed through a telephone number assigned by that carrier. In addition, they would be required to provide, upon request and without charge, a list of all telephone numbers that have been assigned to a pay-per-call service and a short description of each such service. Finally, carriers who not only assign pay-per-call numbers but also provide billing and collection services for pay-per-call programs would be required to (1) establish local or toll free telephone numbers to handle inquiries and provide information on subscribers' rights and obligations with respect to use of pay-per-call services and (2) provide to each subscriber, either within 60 days after effectuation of our rules or 60 days after new service is established, a disclosure statement explaining consumers' rights and responsibilities with respect to pay-per-call services.

65. Comments. Commenters generally accept the mandated disclosure and dissemination system which is reflected in proposed Section 64.1509[114] while at the same time opposing the imposition of any additional obligations on common carriers.[115] However, one state public service commission and two consumer

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112 47 U.S.C. § 228(c)(2).

113 47 C.F.R. § 64.712.

114 But see Comments of NAA at 2 (objects to § 64.1509(a)(2) requirement for carrier to disclose short description of pay-per-call services to "all interested persons" since a carrier or other interested person could use descriptive information for "internal marketing purposes and for enhancement of its own services in competition with a newspaper's service or that of any other service provider"); Comments of Pacific Bell at 9 (to prevent carriers' competitors from obtaining competitively useful information, "'interested persons'" should be defined as "end users seeking information about pay-per-call services for which they have been charged").

115 See, e.g., Comments of NAIS at 16; Comments of Phone Programs at 9-10 (additional disclosure programs would impose additional costs on carriers which would then be passed to IPs; no objection to additional voluntary consumer awareness programs by carriers but costs should not be passed to IPs). But see Comments of NAAG at 20-21 (common carriers should be required to provide pay-per-call complaints and names of addresses of pay-per-call users to law enforcement authorities upon written request and without a subpoena).

interest organizations contend that the proposed education requirements will not adequately inform subscribers as to their pay-per-call rights and responsibilities.[116] Accordingly, they urge the Commission to require carriers to release more information regarding IPs and/or engage in more active consumer awareness programs. NACAA contends that carriers should be required to disclose the name an IP uses in advertising if that name is different from the IP's legal name, and should inform subscribers about pay-per-call rights "on a frequent and regular basis."[117] CA recommends that carriers be required to conduct active and aggressive consumer education programs featuring "advertisements, direct mail and special efforts to make sure that information reaches low income and limited-English-speaking customers." CA further urges that all pay-per-call disclosure statements, bills, and bill inserts be required to employ specific language that would be drafted by the Commission.

66. Decision. Section 64.1509 is being adopted with minor modifications. Specifically, we are expanding the information dissemination obligations placed on IXCs to require provision of a pay-per-call disclosure statement to all subscribers on an annual basis, either directly by IXCs or through contracts with LECs who perform billing and collection for the IXCs. We believe that a one-time disclosure requirement is insufficient to promote consumer awareness, especially since changing household circumstances may increase a subscriber's vulnerability to charges from unauthorized calls to pay-per-call programs. We have also added new categories of information which must be included in the disclosure notice: the possibility of involuntary blocking of 900 access for failure to pay legitimate pay-per-call charges[118] and the prohibition against disconnection of basic communications services for failure to pay pay-per-call and similar charges.[119] This requirement should increase consumer awareness of basic pay-per-call rights without imposing any appreciable burdens on IXCs.

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116 Comments of NYDPS at 4-5; Comments of NACAA at 9-10; Comments of CA at 5-6 ("after the fact" disclosure programs are insufficient; bill inserts are ineffective educational tool since usually discarded unread). BellSouth, while not explicitly endorsing a requirement for more detailed pay-per-call disclosures by common carriers, states its own plans to include pay-per-call information in the consumer information section of its white pages directory and to distribute pay-per-call bill inserts annually. Comments of Bell South at 7.

117 Accord Comments of NYDPS at 4-5 (carrier distribution of disclosure statement should be required "at least" annually to balance regular exposure to "the advertisements and inducements of pay-per-call vendors").

118 See ¶¶ 82-84, infra.

119 We decline to formulate specific language for IXCs to use in their informational materials. There is no indication that consumer interests would be most effectively served by requiring that Commission-drafted text be employed by carriers in all their communications with subscribers involving pay-per-call matters.

67. However, no further information disclosure or dissemination requirements will be imposed on IXCs under Section 64.1509. While we acknowledge some validity to CA's concerns regarding the effectiveness of bill inserts or disclosure statements as educational tools, we must balance the legitimate interest in promoting consumer awareness against the burdens and costs which would accompany more stringent consumer education requirements. While we would encourage them, we see no justification for taking the extraordinary step of mandating carrier advertising campaigns or other activities of the nature suggested by CA. The establishment of the required toll-free pay-per-call information lines along with the provision of annual disclosure statements represents reasonable efforts to promote consumer awareness. The fact that the information line may be used by subscribers primarily after pay-per-call charges have been assessed does not diminish its usefulness or establish the need for additional disclosure requirements.

68. The obligation of IXCs to provide all interested persons with specified categories of information regarding pay-per-call programs is not being either restricted or enlarged as requested by some commenters. Parties who fear that competitively valuable information might be disclosed under this provision have not explained the competitive utility of a listing of assigned pay-per-call numbers or general descriptive information regarding each pay-per-call service. Moreover, no evidence has been presented to suggest that Congress intended to limit the designation "interested persons" in any way. Similarly, neither the statute nor the record in this proceeding supports extending common carriers' disclosure obligations to require provision of subscriber information without benefit of a subpoena.

J. Billing and Collection of Pay-Per-Call and Similar Service Charges (Section 64.1510)

69. **Proposal**. Our NPRM/NOI proposal incorporated the TDDRA's prohibition against common carrier billing for any pay-per-call services when it is known, or reasonably should be known, that those services have not been offered in compliance with the TDDRA. Further, we also proposed to codify the TDDRA's requirements that bills issued by common carriers must show, in a portion of the bill separate from ordinary telephone charges: (1) the amount of pay-per-call charges, (2) the type of services being charged for[120], and (3) the date, time, and duration of pay-per-call calls. We asked commenters to consider whether consumer interests would be served by requiring inclusion of additional information and, separately, whether any additional requirements would impose undue burdens on billing carriers.

70. **Comments**. Commenters generally accept the billing requirements established by the TDDRA although one party suggests that carriers not be required in show the duration of a call when a flat rate is charged.[121] Opinion

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120 This provision, although referenced in the NPRM/NOI, was inadvertently omitted from the proposed rule.

121 Comments of U S West at 25-26 (LECs are not informed of call duration for calls billed at flat rate).

is divided as to the desirability of including information beyond that required by the statute for carrier-issued bills that include pay-per-call charges. Most parties believe that inclusion of an IP's name, address and/or telephone number on a bill is unnecessary and unduly burdensome on carriers given Section 64.1509(b)(1)'s requirement for the establishment of a toll free number over which such information may be obtained.[122] However, despite general opposition from billing carriers, some parties suggest that other information regarding consumer rights should be mandatory when pay-per-call charges appear on telephone bills. Various parties contend that inclusion of the following types of information or disclosures should be required: (1) instructions regarding dispute resolution procedures,[123] including any time limits for disputing charges,[124] and the right to obtain a refund[125] (2) notice that termination of basic communications services is prohibited in the event that pay-per-call charges are not paid,[126] (3) notice that IPs may pursue alternate means of collecting pay-per-call charges even if such charges are removed from a telephone bill,[127] (4) notice of 900 blocking options.[128] Several commenters challenge the NPRM/NOI proposals to extend the TDDRA's billing segregation requirements to collect information services calls, emphasizing again the impossibility of distinguishing collect information services calls from collect calls of other types.[129]

71. **Decision**. We believe that some additional information should be included in telephone bills showing pay-per-call charges. Under Section 64.1510 as adopted herein, we are requiring that bills issued by common carriers for pay-

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122 Comments of AT&T at 9; Comments of MCI at 6-7; Comments of Pacific Bell at 11; Comments of Phone Programs at 11; Comments of U S West at 25-28; Comments of SWBT at 2, 8; Comments of Sprint at 7; Reply Comments of GTE at 5; Reply Comments of USTA at 9; Reply Comments of NTCA at 4-5; Reply Comments of Ameritech at 2-3. But see Comments of CA at 7 (inclusion of IP name on bills is necessary to avoid consumer "frustrat[ion]"); Comments of NACAA at 10 (bills should include both advertising and legal name of IP, if different, and complete street address).

123 Comments of NAAG at 13; Comments of NACAA at 11; Comments of CA at 6.

124 Comments of NACAA at 11.

125 Comments of CA at 7.

126 Comments of NAAG at 13; Comments of CA at 7; Comments of NACAA at 11; Comments of BellSouth at 7.

127 Comments of AT&T at 10; Comments of CA at 7; Comments of NACAA at 11. But see Comments of MCI at 6.

128 Comments of CA at 7.

129 Comments of AM at 7-9; Comments of Bell Atlantic at 4-5; Comments of CBT at 2; Comments of Pacific Bell at 11; Reply Comments of GTE at 5. See ¶ 52, supra.

per-call charges must contain a brief statement indicating that (1) such charges are for non-communications services, (2) neither local nor long distance services can be disconnected for non-payment although an IP may employ non-carriers to seek to collect pay-per-call charges, (3) pay-per-call blocking is available upon request, and (4) access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges. The inclusion of this brief statement should neither burden billing carriers[130] nor confuse subscribers with an excess of information. While the requirement for segregation of pay-per-call charges is valuable, we do not believe that segregation alone will ensure that subscribers are able to recognize that these charges are being related to a non-communications service, because all long distance charges are separated from local charges on subscriber bills. In addition, brief reference to the disconnection prohibition and blocking option should enable subscribers to make informed choices about use of pay-per-call services and payment of charges. Receipt of a full disclosure statement, even on an annual basis, does not obviate the need for such minimal disclosures at the time charges are billed. It is possible that a subscriber using or receiving a bill for pay-per-call services for the first time will not recall information that may have been conveyed over a year before.

72. However, we do not believe that additional pay-per-call disclosures should be required on bills.[131] Full identification of IPs will be available through the IXC's toll-free pay-per-call information lines, the numbers of which will be printed on each bill showing pay-per-call charges. In light of this easy means of obtaining identifying information, we see no reason to impose upon carriers or IPs the added costs of disclosing material that the IXC is already required to disclose. There is no evidence to suggest that a customer's knowledge of an IP's name or address will influence an initial decision whether to pay or contest pay-per-call charges.

73. We are not mandating any billing disclosures related to dispute resolution. Under the dual regulatory framework established by the TDDRA, such matters are most properly left to the FTC. Unlike other areas where the statute requires both this Commission and the FTC to adopt rules incorporating particular requirements, the TDDRA places matters involving billing disputes solely with the FTC.[132] In its rulemaking proceeding to implement the requirements of the TDDRA, the FTC has proposed numerous provisions that would govern billing disputes involving pay-per-call charges, regardless of whether billing is done by a common carriers or some other entity. While we agree that our pay-per-call rules governing common carrier conduct must be consistent with those adopted by the FTC, they need not be identical given the two agency's differing ranges

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130 BellSouth and Pacific Bell report that their bills already contain such a statement although Pacific Bell opposes any requirement for inclusion. Comments of BellSouth at 7; Comments of Pacific Bell at 12.

131 In addition, the duration of a call need not be shown if charges are not time-based.

132 Title III of the TDDRA charges the FTC with adopting rules governing dispute resolution procedures for telephone-billed purchases.

of jurisdiction and areas of expertise. Thus, it is not inappropriate or unreasonable that common carriers be expected to consult the rules of both agencies to determine what billing disclosures must be made.

74. Because of the apparent difficulty in distinguishing tariffed collect information service calls from other types of collect calls, we are not adopting an absolute requirement for segregation of such calls on a subscriber's telephone bill. However, since there is some indication that identification of collect information service calls can, in fact, sometimes be made,[133] we are requiring segregation whenever possible. Such segregation is also required for interstate information charges assessed pursuant to a presubscription of comparable arrangement. Since these services are provided pursuant to specific arrangements between customers and IPs, carriers who choose to bill for such services on behalf of IPs should be able to include in their billing contracts provisions for identifying such services and billing them separately.

K. Forgiveness of Charges and Refunds (Section 64.1511)

75. **Proposal**. Under Section 228(f)(1), the Commission is required to set procedures "to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations [prescribed under the section], any provision of, or regulations prescribed pursuant to title II or III of the [TDDRA], or any other Federal law." We proposed to implement this requirement by imposing upon common carriers an obligation to forgive pay-per-call charges or issue refunds for such charges when either the Commission or the carrier, upon written or oral protest or on its own motion, determines that a pay-per-call program has been conducted in violation of federal law or federal pay-per-call regulations. We also sought to address those situations where non-carriers perform billing and collection functions by requiring IXCs to include in their tariffs or contracts with IPs, provisions specifying that the IPs, and/or their billing agents, have in place similar procedures for issuance of refunds or forgiveness of charges. We asked commenters to consider the scope of violative behavior necessary to trigger a refund and the extent of a carrier's obligation to determine compliance with all federal laws, not just those directly relevant to pay-per-call programs.

76. **Comments**. Proposed Section 64.1511 drew strong opposition from numerous parties representing different interests. Carriers and IPs alike contend that the proposed rule goes beyond the statutory requirements in a way that poses both undue burdens and risks of unwarranted monetary losses. Several parties draw a distinction between statutory language which requires refunds when violations of federal have been "found" with the proposed rule language which requires refunds when either this Commission or a carrier "determines"

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133 Comments of CBT at 6.

unlawfulness.[134] MCI contends that the TDDRA's use of the term "found" verifies that a carrier's refund obligations should be triggered only when unlawfulness has been established by order of this Commission, the FTC, or a court or some other neutral body of competent jurisdiction. According to carriers, transferring to them a responsibility to make such determinations as to lawfulness and, as a result, initiate wholesale refund actions goes beyond statutory requirements in a manner that is unreasonably burdensome and unlikely to have the desired result of encouraging IP compliance with federal laws.[135] These parties are apparently concerned not merely with the obligation to determine lawfulness, but also with the burden of undertaking large-scale refund efforts and, possibly, being left to absorb the costs of such refunds.[136] IPs, on the other hand, assume that they will be responsible for covering refund costs and are principally concerned that carriers have been granted "unilateral, and apparently unreviewable, power" to make decisions posing major economic consequences for their operations.[137]

77. Parties representing consumer interests do not view the proposed refund rule as onerous, although some envision an aggressive role for carriers in determining when violations of law have occurred and ensuring issuance of refunds.[138] Generally, however, those supporting the general structure of the proposed refund rule appear to assume that a carrier's obligation to forgive or refund pay-per-call charges applies to situations where a subscriber has challenged such charges.[139] Apparently based on this assumption, some parties argue for a broader refund requirement whereby a specific determination of unlawfulness is not necessary, but subscribers may be relieved of responsibility

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134 Comments of MCI at 7-8; Comments of AT&T at 10-11; Comments of Phone Programs at 12-13; Comments of AM at 2, 10-11; Reply Comments of Ameritech at 4-5.

135 Comments of AT&T at 11. See also Comments of SWBT at 9.

136 See, e.g., Comments of AT&T at 11.

137 Comments of AM at 10-11. See also Comments of NAIS at 17-19; Comments of Phone Programs at 12-13; Comments of Joint IPs at 8-9.

138 Comments of NACAA at 11 (carriers should "monitor" pay-per-call programs to ensure compliance); Comments of CA at 8 ("Carriers must take responsibility to not collect charges for pay-per-call programs that are in violation of law or regulations. The carriers are in the best position to make such a determination because only they have access to advertising and program scripts. . . . We would expect . . . that carriers be required to insure that programs are in compliance with laws and regulations pertaining to the program, what is being offered or promised on it, and how the program is advertised. We would expect that the carriers track not just laws and regulations but court decisions at the state and federal level that deal with the advertising and content of the pay-per-call programs.")

139 See, e.g., Reply Comments of Pa. AG at 5; Reply Comments of NAAg at 2-4.

for pay-per-call charges when they complain of services that are "deceptive, misleading or unfair"[140] or when the charges are for a call unauthorized by the subscriber.[141] Both NAAG and NACAA would include violations of state law as cause to issue a refund. CA contends that a finding of unlawfulness by a state attorney general should be a sufficient basis for refunds. Several parties suggest that time limits be included in any type of refund provisions.[142]

78. Decision. It is apparent that proposed refund provisions are a source of considerable confusion and should be modified. In drafting the requirements of proposed Section 64.1511, it was not our intention to impose upon common carriers an obligation to initiate pay-per-call investigations absent a complaint or to refund pay-per-call charges which have not been challenged by a subscriber. Thus, our expansion of the statutory language simply was meant to encompass existing carrier practices for handling consumer complaints regarding pay-per-call charges, and recognize carriers' discretion to forgive, credit, or refund such charges without affirmative direction from the Commission.[143] Accordingly, section 64.1511 has been redrafted to clarify that carriers are not charged with making determinations of unlawfulness for the purpose of initiating wholesale refund actions.

79. We believe that the new language of this rule, adopted herein, clearly recognizes the limits of a carrier's obligation to investigate pay-per-call programs and issue refunds. Under the rule a carrier is afforded discretion to set standards for determining when subscriber complaints merit forgiveness, refund, or credit of pay-per-call charges, provided that such adjustments must be made if the carrier's investigation reveals that the pay-per-call service for which charges were assessed was not offered in compliance with federal law or the pay-per-call rules promulgated by this Commission or the FTC, or if a finding of unlawfulness is made by this Commission, the FTC or a court of competent jurisdiction. This provision is not intended to impose upon carriers any obligation to monitor pay-per-call programs in the absence of a complaint or to require examinations of federal laws not directly applicable to the provision of pay-per-call service. In so finding, we reject CA's contention that carriers should be compelled to undertake aggressive review of pay-per-call programs and pay-per-call advertising, along with judicial precedent governing the provision of such services. Such a role would impose upon common carriers unduly burdensome investigatory functions that clearly are not contemplated by the either TDDRA or the Communications Act.

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140 Comments of NAAG at 11.

141 Comments of CPUC at 2-3; Comments of NAAG at 11.

142 Comments of NACAA at 11; Comments of Phone Programs at 12-13 (60 days exceeds time afforded for credit card or bank account inquiries); Comments of NAIS at 17-19.

143 The Commission may, of course, order carriers to refund pay-per-call charges. The Commission's complaint procedures established pursuant to Section 208 of the Communications Act provide a vehicle for parties seeking a carrier to refund or credit disputed pay-per-call charges.

80. We believe that our modifications should alleviate the concerns expressed by both carriers and IPs. However, to the extent IPs may contend that it is inappropriate to cede to carriers any authority to determine when charges for IPs' services should be forgiven, credited, or refunded, we find such a position to be without merit. Billing agents traditionally hold authority to remove charges from a customer's bill and refer them back to the originating entity when they determine circumstances so warrant. Nothing in our revised refund rule precludes an IP from seeking to collect, through alternate means, charges which it believes were forgiven pursuant to an incorrect determination of illegality by a carrier. We are not specifying time frames during which consumers may seek forgiveness, credit, or refund of pay-per-call charges. The FTC has adopted a 60 day limit on consumers who seek adjustment of charges through that agency's billing review procedures. However, consumers who seek review of a carrier's actions with respect to the provision of pay-per-call services are afforded two years to file a complaint with this Commission.[144]

81. We decline to expand the scope of violative behavior set by the statute as a prerequisite for any refund obligation. The TDDRA specifically refers to violations of federal law as grounds for requiring refund of pay-per-call charges. Given this clear statutory language, we see no justification for including in our rules violations of state law as a basis for invoking federal refund requirements. Similarly, we do not believe that determinations regarding non-compliance with federal law or regulations made by state attorneys general should be sufficient to trigger refund requirements. State authorities are, of course, free to continue to alert the federal agencies or carriers to possibly unlawful pay-per-call programs. Likewise, carriers are not precluded from determining that circumstances other than unlawfulness warrant forgiveness of pay-per-call charges in particular cases. Thus, carriers may continue policies under which pay-per-call charges may be forgiven in instances of unauthorized use or when a subscriber merely contends that a program was offered in a deceptive, misleading, or unfair manner. However, given explicit statutory language indicating that mandatory refunds are to be limited to instances of the program's non-compliance with federal laws or regulations, we decline to adopt these more expansive provisions.

L. Involuntary Blocking of Pay-Per-Call Services (Section 64.1512)

82. **Proposal**. Proposed section 64.1512 specified that, under the Commission's pay-per-call regulations, carriers and IPs are not precluded from blocking programs from telephone numbers assigned to subscribers who have failed to pay legitimate pay-per-call charges. We asked in the NPRM/NOI whether this general provision satisfies the TDDRA's directive that the Commission "identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges"[145] or whether some more detailed rule is required.

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144 47 U.S.C. § 415.

145 47 U.S.C. § 228(b)(4).

83. **Comments**. A majority of commenters addressing this provision endorse involuntary blocking as an effective tool against subscribers who fail to pay legitimate pay-per-call charges.[146] No party suggests that precise procedures involving the exercise of the involuntary blocking option need be specified by rule[147] although some commenters suggest that the proposed rule be refined in recognition of consumer interests. CA and CPUC suggest that fair operation of involuntary blocking may hinge on the manner in which the term "legitimate" is defined. NYPDS would prohibit involuntary blocking when a complaint regarding pay-per-call charges is pending. Finally, Sprint asks that LECs be required to provide involuntary blocking free of charge.

84. **Decision**. Section 64.1512 is being adopted almost exactly as proposed. We have added one condition to preclude involuntary blocking while a subscriber has a pay-per-call complaint pending under dispute resolution procedures mandated by the FTC. This provision should remove the possibility that a consumer might be forced to choose between continued access to 900 services and pursuit of a complaint. This restriction on the execution of involuntary blocking should not interfere with either carriers' or IPs' exercise of rights under this section. The restriction is not intended to preclude involuntary blocking when a carrier or IP has decided in one instance to sustain charges against a subscriber but that subscriber files additional separate complaints.[148] We believe it is unnecessary to attempt to define the term "legitimate" or to specify all the possible instances when pay-per-call charges might be found to be "illegitimate." Carriers and IPs reasonably must be afforded some discretion to investigate the individual circumstances of a consumer's complaint to determine whether charges should be sustained. Finally, we see no justification for requiring LECs to provide involuntary blocking to IXCs or IPs at no charge, especially in view of the TDDRA prohibition against recovering costs of compliance with pay-per-call regulations from general telephone ratepayers.[149]

M. Verification of Charitable Status (Section 64.1513)

85. **Proposal**. The NPRM/NOI incorporated in proposed Section 64.1513 the TDDRA's requirement that any common carrier assigning a pay-per-call number to

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146 Comments of BellSouth at 8; Comments of NAIS at 19-20; Comments of NYNEX at 3-4; Comments of SNET at 6-7; Comments of NACAA at 12; Comments of CPUC at 2-3.

147 See e.g., Comments of NAIS at p. 19-20 (designation of specific procedures would be premature given industry efforts to devise means to protect against fraud and continuing refinement of blocking techniques).

148 Congress specifically cited the example of a consumer who "has chronic complaints" about pay-per-call transactions as an example of when involuntary blocking could be appropriately applied. S. Rep. No. 102-190 at 16, 102nd Cong., 1st Sess., 137 Cong. Rec. (daily ed. Oct. 16, 1991).

149 See ¶ 89, infra.

an IP that it knows or reasonably should know is engaged in soliciting charitable contributions must obtain proof of the tax exempt status of any person or organization for which contributions are solicited. In addition, we invited commenters to discuss whether our regulations should include a requirement that charitable institutions soliciting contributions though a pay-per-call format demonstrate that they meet the solicitation requirements for each state in which their solicitations may occur.

86. **Comments**. Three parties who address this issue contend that the proposed rule is insufficient to protect consumer interests and that the Commission should adopt more stringent requirements to ensure the eligibility of organizations seeking contributions through pay-per-call programs.[150] These parties urge the Commission to require carriers to collect from IPs documentation beyond the proof of tax exempt status required under our proposed rule. NACAA believes that submission of IRS Determination Letters also should be required. CA would require that carriers obtain a copy of any contracts between the IP and the charity. NAAG would require documentation showing both the IP's compliance with state charity registration acts and authorization to seek charitable contributions. NAAG also believes that carriers should be required to inquire of each IP seeking assignment of a pay-per-call number whether or not solicitations will be made. Finally, NAAG recommends that violation of any state charitable solicitation laws be cause for termination under Section 64.1503. CA contends that the Commission should include a requirement that interstate charitable solicitations conform to the laws of all states in which the solicitation may occur.[151]

87. **Decision**. Section 64.1513 is being adopted as proposed. We do not believe that the additional requirements which some commenters would impose upon IXCs are warranted. The TDDRA simply requires that carriers obtain proof of tax exempt status if it is known or reasonably should be known that an IP is making solicitations for charitable contributions through a pay-per-call program.[152] In reporting on a predecessor pay-per-call bill, the Senate Committee on Commerce, Science, and Transportation noted that "the burden of ascertaining when a service is asserting that it is tax exempt should not be borne by the common carrier. The Committee expects that the information service provider will notify the common carrier any time it offers a program seeking donation for a tax-

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150 Comments of CA at 9; NAAG at 17-19; NACAA at 12. But see Reply Comments of GTE at 7-8.

151 CA also recommends that advertisements and preambles for programs soliciting charitable contributions be required to disclose what percentage of contributions is received by the charity. These issues are within the FTC's statutory responsibilities. Comments of CA at 9.

152 We continue to believe that the most straightforward means of showing tax exempt status is through IRS Form 990, although we will not designate this as the only documentation that a carrier may accept. NACAA does not explain why IRS Determination Letters should also be submitted, and we decline to impose such a requirement.

exempt entity."[153] Thus, we will not impose any standard which would require carriers to question IPs as to their possible solicitation activities prior to assigning a pay-per-call telephone number.

88. Given the clear federal focus of the TDDRA, we see no basis for a requirement that interstate charitable solicitations made through a pay-per-call format comply with state laws and regulations and we decline to subject either IPs or carriers to the burden of assembling or collecting documentation of various state authorizations.

N. Recovery of Costs (Section 64.1515)

89. Proposal. The NPRM/NOI proposed to codify the TDDRA's prohibition against recovering any costs associated with common carriers' compliance with either the statute or the Commission's implementing regulations from local or long distance telephone ratepayers.[154] Although our proposed rule simply repeated the statutory prohibition against cost recovery from general telephone ratepayers, we suggested that more detailed provisions might be necessary to ensure that forbidden cost recovery does not occur. Accordingly, we first asked commenters to discuss a means of identifying costs incurred by carriers in connection with free blocking, information dissemination programs, billing procedures and refund requirements. Second, we inquired as to the least complicated or intrusive means of ensuring that such costs are excluded from local and long distance rates, inviting comments on a Federal-State Joint Board proceeding to revise the separations rules, revisions of the Part 69 rules, addition of a new Part 32 account, or a surcharge on 900 access rates.

90. Comments. Virtually all commenters addressing cost recovery oppose dealing with the TDDRA's restrictions through revision of our general accounting or jurisdictional separations rules.[155] Commenters generally favor cost recovery through an increase in LECs' 900 access rates which would be passed to IXCs and, in turn, to IPs through an increase in transmission or billing and collection rates charged to IPs by IXCs. Although some commenters concede that it may be difficult to properly isolate costs on a jurisdictional basis, there is general agreement that this difficulty does not warrant initiation of complex rule makings or Joint Board proceedings at this time.[156]

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153 S. Rep. No. 102-190 at 17, 102 Cong., 1st Sess., 137 Cong. Rec. (daily ed. Oct. 16, 1991).

154 47 U.S.C. § 228(c)(4), (f)(2).

155 Comments of NYNEX at 5; Comments of NACAA at 13; Comments of Bell Atlantic at 8; Comments of MCI at 8; Comments of Pacific Bell at 13; Comments of SWBT at 6; Comments of Sprint at 16. But see Comments of CBT at 4 (Part 36 should be revised through Joint Board proceeding; Parts 32 and 69 should be revised to identify costs and revenue for proper jurisdictional separation).

156 Comments of NYNEX at 6.

91. **Decision**. We will not mandate at this time a specific mechanism to be employed by carriers in recovering their costs of complying with the requirements of our new pay-per-call regulations. The virtually unanimous opposition of commenters to such action convinces us that we should not commence a Joint Board proceeding or undertake complicated and time-consuming rule revisions at this time. Given the relatively small expense involved and commenters' general confidence that costs of complying with our pay-per-call rules can be recovered through surcharges ultimately recovered from IPs, it is unnecessary for the Commission to impose any requirements beyond the general prohibition against recovery of costs from other ratepayers. The surcharges or rate changes favored by commenters as a means of cost recovery can be implemented, without our specific involvement, through tariff and contract changes initiated by the carriers. We would, of course, consider initiating a new rule making action if experience shows designation of a specific cost recovery system or wholesale rule revisions to be necessary to ensure compliance with the TDDRA.

O. Preemption

92. **Proposal/Background**. Under the Commission's existing pay-per-call rules, IXCs may transmit only those pay-per-call programs which include an introductory message (or preamble) at the beginning of each call, clearly disclosing: (1) the cost of the call, (2) a description of the information, product, or service the caller will receive for the fee charged, and (3) the name of the IP. The preamble segment must also provide an opportunity for the caller to hang up without charge.[157] In the 900 Services Order, the Commission explicitly preempted state-imposed preamble requirements on jurisdictionally mixed traffic.[158] This decision reflected the fact that IXCs, LECs and IPs were incapable of separating inter and intrastate calls to a specific 900 number on a real time basis so that different preambles could be appropriately applied. As a separate matter we concluded that even if different preambles could be appropriately applied, conflicting state requirements would constitute a "wasteful and inefficient duplication of resources . . . . [which] would cause undue confusion and expense to all parties."[159]

93. In the 900 Services Reconsideration Order, the Commission reconsidered its preemption of inconsistent state-imposed preamble requirements on jurisdictionally mixed traffic, and noted that new tariffed features may have undermined the validity of our prior finding of jurisdictional inseverability, which was "one of the fundamental bases" of our preemption decision.[160] We decided against seeking further comments in that proceeding on the issue of severability and its effect on our preemption decision, however, in light of the passage of the TDDRA, which required the FTC to adopt preamble standards and

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157 47 C.F.R. § 64.711.

158 6 FCC Rcd at 6180-81.

159 6 FCC Rcd at 6181.

160 8 FCC Rcd at 2335.

apply them directly to IPs. The FTC's clear obligation to determine and enforce preamble requirements coupled with our own broad compliance mandate, which requires IXCs to handle only those pay-per-call programs in conformance with FTC regulations, prompted us in the NPRM/NOI to propose deletion of our own separate preamble rule. As noted in the 900 Service Reconsideration Order, that action would cause cessation of our limited preemption because state requirements would no longer conflict with a Commission rule.

94. **Comments**. Several commenters urge the Commission to remain involved in preamble matters.[161] This position centers less on an interest in retention of a specific FCC-imposed preamble standard than on ensuring continuation of federal preemption of inconsistent state preamble and other requirements for jurisdictionally mixed traffic. NAIS offers a detailed plea for continued preemption that is referenced and endorsed by several other parties. NAIS contends that regardless of which agency determines preamble standards, the Commission "may not lawfully" abandon preemption without explicitly determining that the bases for such action articulated in the 900 Services Order no longer apply. NAIS believes that such a finding cannot be made.

95. **Decision**. We see no compelling purpose to be served by retaining a separate preamble provision in the Commission's rules. As indicated in the NPRM/NOI, the broad compliance mandate required by the TDDRA and incorporated in Section 64.1502 of our rules ensures that carriers may not assign telephone numbers to pay-per-call services that do not meet all applicable requirements promulgated by the FTC, including those for preambles. Thus, consumers would not realize any particular benefit and neither carriers nor IPs would receive any particular guidance from a specific Commission preamble rule.[162]

96. Moreover, we can no longer conclude that this Commission needs to preempt any state-imposed preamble requirements in view of Congress' clear decision to place responsibility for articulating and enforcing preamble standards with the FTC. We cannot assume that this action was taken without appreciation of the extent of that agency's jurisdiction, which is different from our own. While NAIS correctly observes that nothing in the TDDRA requires deletion of our own preamble regulation, neither does anything in the TDDRA establish a presumption that we are expected to take preemptive measures regarding state action that may conflict with the FTC's regulatory authority over IPs.

97. We reject NAIS' argument that the factors that led us to preempt in the 900 Services Order require our continued preemption notwithstanding the FTC's exercise of jurisdiction in this area. NAIS correctly states that our concern in that proceeding was founded on the possibility that state preambles

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161 See, e.g., Comments of IIA at 10-12, 15; Comments of Phone Programs at 8; Comments of NAIS at 12; Reply Comments of DMA at 6.

162 Moreover, if both agencies had specific preamble rules, both agencies would have to coordinate interpretations, waivers and other regulatory actions. We do not believe that Congress intended to impose such a burden on all parties.

on jurisdictionally mixed traffic would present an obstacle to our Title I responsibilities. We noted that carriers would have to require such state preambles on all calls, or develop means to identify intrastate calls, resulting in wasteful duplication of resources. Thus, we adopted a nationwide standard for educating consumers to avoid undue confusion and expense.

98. The above findings were made when neither the FTC nor FCC had adopted nationwide rules governing pay-per-call services and when there was no apparent way for anyone to identify intrastate 900 calls on a real time basis. Customer confusion about the service was considerable. States had taken actions in this area, however, and we properly were concerned about conflicts that would exist when those requirements were applied to interstate calls subject to our new requirements. That is no longer the situation in which this industry operates. There has been a uniform nationwide preamble requirement for jurisdictionally mixed calls for over 18 months, and there is no evidence in this record that states desire to place differing preamble restrictions on calls that may in fact be interstate. We stated in the 900 Services Reconsideration Order that our preemption did not extend to calls that are blocked from interstate access,[163] and it appeared that industry services may be becoming available to allow identification of such calls.

IV. NOTICE OF INQUIRY REGARDING APPLICATION OF PAY-PER-CALL REGULATIONS TO DATA SERVICES

99. The TDDRA requires the Commission to report to Congress by October 28, 1993 as to the desirability of extending pay-per-call regulations to "persons that provide, for a per-call charge, data services that are not pay-per-call services."[164] Since the precise range of services encompassed by this provision is not readily apparent, the NPRM/NOI invited parties to describe those data services not within the statutory definition of pay-per-call. We then asked commenters to discuss the costs and benefits that would accompany an extension of our pay-per-call regulations to cover such services.

100. Only a few commenters address this issue and those that do apparently are uncertain as to what services are the subject of Congress' inquiry.[165] Nonetheless, commenters agree that an extension of pay-per-call regulations is unnecessary in light of the fact that usage-priced data services have not engendered the types of complaints associated with audio pay-per-call services.[166]

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163 The TDDRA clearly recognizes the validity of state requirements applicable to intrastate calls that do not significantly impede the enforcement of federal laws. 47 U.S.C. § 228(g)(4).

164 47 U.S.C. § 228(f)(3).

165 Comments of Cox at 8; Comments of USTA at 10.

166 Comments of Bell Atlantic at 9; Comments of Cox at 9; Comments of Prodigy at 4.

101. At this time, we do not recommend extension of the TDDRA's protective provisions beyond those services explicitly covered by the statutory definition of pay-per-call. This definition does not exclude data or other non-audio services per se.[167] Section 228(1)(A)(iii) includes within the pay-per-call definition "any service . . . the charges for which are assessed on the basis of the completion of the call."[168] Since data service clearly falls within a larger category of "any service," this provision could encompass at least some data services, and subject providers of such services and transmitting carriers to the requirements of the TDDRA. Thus, in considering extension of pay-per-call regulations, Congress' designation of "data services that are not pay-per-call" appears to apply to data services offered in a manner that would place them outside the statutory definition of pay-per-call, e.g. when charges are not assessed on the basis of completion of a call or when service is provided pursuant to a presubscription or comparable arrangement. Based on the comments gathered in this proceeding and complaints received by this Commission, there is no evidence suggesting any need to extend pay-per-call regulations to cover such provisions of data services. Complaints of fraudulent and deceptive practices in the pay-per-call industry apply virtually without exception to audio services. Given the already broad applicability of the TDDRA we have no basis to recommend expansion of our regulations to cover data services that do not fall within the statutory definition of pay-per-call services.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

102. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

103. **Need and purpose of this action.** This Report and Order adopts regulations designed to meet the requirements of the TDDRA by promoting the development and availability of legitimate pay-per-call services while protecting consumers against unfair and deceptive practices that have occurred in the pay-per-call industry and by ensuring that they are provided with adequate information to make educated choices about their use of such services.

104. **Summary of the issues raised by the public comments in response to the initial Regulatory Flexibility Analysis.** No comments were submitted in response to the Initial Regulatory Flexibility Analysis.

105. **Significant alternatives considered and rejected.** The TDDRA imposes numerous mandatory requirements which the Commission is compelled to codify. In instances where the statute affords discretion, the NPRM/NOI solicited comment on various possible provisions. Commenters generally accepted the statutory requirements of the TDDRA and supported the basic regulatory framework proposed in the NPRM/NOI. Nonetheless, commenters expressed a variety of opinions with respect to specific NPRM/NOI proposals and many suggested alternatives to the proposals. The Commission considered all of the alternatives presented in the

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167 An earlier version of the legislation which was limited to "audiotext" services would have done so explicitly.

168 47 U.S.C. § 228(1)(A)(iii).

proceeding and all comments regarding the various issues that were raised. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action to implement the requirements of the TDDRA and to protect consumers against unfair and deceptive practices associated with pay-per-call services and ensure that they are provided with adequate information to make educated choices about their use of such services.

VI. CONCLUSION

106. With this Report and Order, we adopt rules to implement the specific statutory requirements of the TDDRA in a manner that will maximize consumers' protection against unfair and deceptive practices associated with the use of interstate pay-per-call services with minimal disruption to common carriers and providers of lawful and legitimate pay-per-call services. All interstate pay-per-call services must be offered through telephone numbers on the 900 service access code. Information service charges cannot be assessed against callers to 800 and other toll free numbers unless those callers have established a presubscription agreement with the information services provider or execute a transaction through a credit or charge card that is subject to the Truth in Lending Act or Fair Credit Billing Act. Common carriers carrying interstate pay-per-call services are required to promptly terminate programs not in compliance with federal law or regulations. These carriers must also establish toll free pay-per-call information lines and provide pay-per-call disclosure statements to all subscribers on an annual basis. Pay-per-call charges must be separated from normal telephone charges on subscriber bills and neither local nor long distance telephone service can be disconnected for failure to pay pay-per-call charges. Where technically feasible, subscribers must be offered the option of blocking access to interstate pay-per-call services from their telephone lines. This blocking must be offered to all subscribers at no charge from November 1, 1993 through December 31, 1993 and for 60 days after telephone service is established at a new number. Involuntary blocking of interstate pay-per-call services is recognized as an acceptable means by which carriers and information services providers can protect themselves from customers who incur but fail to pay legitimate pay-per-call charges. Finally, common carriers are prohibited from recovering from general telephone ratepayers any costs incurred as a result of compliance with the Commission's pay-per-call rules.

VII. ORDERING CLAUSES

107. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 218 and 228 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 102-205, 218 and 228, that Part 64 of the Commission's Rules ARE AMENDED as set forth in Appendix B, below.

108. IT IS FURTHER ORDERED that this Report and Order will be effective thirty (30) days after publication of a summary thereof in the Federal Register, except that effectuation of provisions governing billing and collection of pay-per-call services contained in § 64.1510 of Appendix B and rescission of the

Commission's preamble requirements set forth in 47 C.F.R. § 64.711 will be deferred until November 1, 1993.[169]

109. IT IS FURTHER ORDERED that all local exchange carriers SHALL FILE with this Commission, within 120 days of release of this Order, tariffs providing for blocking of services offered on the 900 service access code, consistent with the provisions of this order and to become effective on 60 days' notice. For these purposes, we waive Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, and assign Special Permission No. 93-658.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

169 The November 1, 1993 effective date is adopted to ensure consistency with related rules adopted by the FTC.

APPENDIX A

LIST OF COMMENTERS IN CC DOCKET NO. 93-22

1. Amalgamated Megacorp (AM)
2. American Telephone and Telegraph Company* (AT&T)
3. American Public Communications Council* (APCC)*
4. Ameritech*
5. Association of Information Providers of New York, Info Access, Inc., and American Telnet, Inc.* (Joint IPs)
6. Bell Atlantic
7. BellSouth Telecommunication* (BellSouth)
8. Cincinnati Bell Telephone Company* (CBT)
9. Commonwealth of Pennsylvania, Office of Attorney General** (Pa. AG)
10. Consumer Action (CA)
11. Cox Enterprises, Inc.* (Cox)
12. Direct Marking Association** (DMA)
13. GTE Service Corporation* (GTE)
14. Information Industry Association (IIA)
15. MCI Telecommunications Corporation* (MCI)
16. National Association of Consumer Agency Administrators (NACAA)
17. National Association for Information Services* (NAIS)
18. National Association of Regulatory Utility Commissioners (NARUC)
19. National Telephone Cooperative Association** (NTCA)
20. New York State Department of Public Service (NYDPS)
21. Newspaper Association of America (NAA)
22. NYNEX Telephone Companies (NYNEX)
23. Pacific Bell
24. People of the State of California and the Public Utilities Commission of the State of California (CPUC)
25. Phone Programs, Inc. (Phone Programs)
26. Pilgrim Telephone, Inc.* (Pilgrim)
27. Prodigy Services Company (Prodigy)
28. South Carolina Telephone Coalition (SCTC)
29. Southern New England Telephone Company (SNET)
30. Southwestern Bell Telephone Company (SWBT)
31. Sprint Corporation* (Sprint)
32. Summit Telecommunications Corporation (Summit)
33. Tele-Publishing, Inc. (Tele-Publishing)
34. Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General* (NAAG)
35. Tennessee Public Service Commission (Tn. PSC)
36. U S West Communications, Inc. (U S West)
37. United States Telephone Association* (USTA)
38. VRS Billing Systems** (VRS)
39. 900 America Ltd. (900 America)

* Filing both Comments and Reply Comments
** Filing only Reply Comments

LIST OF COMMENTERS IN RM-7990

1. American Public Communications Council* (APCC)
2. Alabama Public Service Commission (Ala. PSC)
3. American Telephone and Telegraph Company* (AT&T)
4. Consumer Action* (CA)
5. Direct Marketing Association** (DMA)
6. MCI Telecommunications Corporation* (MCI)
7. Metromedia**
8. National Association of State Utility Consumer Advocates and the Pennsylvania Office of Consumer Advocate (NASUCA)
9. Pilgrim Telephone* (Pilgrim)
10. Southwestern Bell Telephone Company (SWBT)
11. Sprint Communications Company L.P. (Sprint)
12. Public Utility Commission of Texas** (Tex. PUC)
13. United States Telephone Association* (USTA)
14. Various individuals
15. VoiceLink, Inc. (VoiceLink)
16. VRS Billing Systems (VRS)
17. 900 Number Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General* (NAAG)

* Filing both Comments and Reply Comments
** Filing only Reply Comments

APPENDIX B

RULES

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 is revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Subpart G of Part 64 is amended by removing Section 64.709 through Section 64.716, inclusive.

3. A new subpart O of Part 64 is added to read as follows:

Subpart O--Interstate Pay-Per-Call and 800 Services

Sec.

Authority: 47 U.S.C. 228.

Subpart O--Interstate Pay-Per-Call and 800 Services

§ 64.1501 Definitions

For the purposes of this subpart, the following definitions shall apply:

(a) Pay-per call service means any service

(1) In which any person provides or purports to provide

(A) Audio information or audio entertainment produced or packaged by such person;

(B) Access to simultaneous voice conversation services; or

(C) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(3) Which is accessed through use of a 900 telephone number.

(b) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(b)(1) Presubscription or comparable arrangement means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer of any future rate changes;

(iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers.

(2) Disclosure of a credit or charge card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. § 1601 et seq. No other action taken by the consumer during the course of a call to an information service, for which charges are assessed, can be construed as creating a presubscription or comparable arrangement.

§ 64.1502 Limitations on the Provision of Pay-Per-Call Services.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall require, by contract or tariff, that such provider comply with the provisions of this subpart and of titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

§ 64.1503 Termination of Pay-Per-Call Programs.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall specify by contract or tariff that pay-per-call programs not in compliance with § 64.1502 shall be terminated following written notice to the information provider. The information provider shall be afforded a period of no less than seven and no more than 14 days during which a program may be brought into compliance. Programs not in compliance at the expiration of such period shall be terminated immediately.

§ 64.1504 Restrictions on the Use of 800 Numbers.

Common carriers shall prohibit, by tariff or contract, the use of any telephone number beginning with an 800 service access code, or any other telephone number advertised or widely understood to be toll free, in a manner that would result in

(a) The calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call;

(b) The calling party being connected to a pay-per-call service;

(c) The calling party being charged for information conveyed during the call unless the calling party has a presubscription or comparable arrangement; or

(d) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

§ 64.1505 Restrictions on Collect Telephone Calls.

(a) No common carrier shall provide interstate transmission or billing and collection services to an entity offering any service within the scope of § 64.1501(a)(1) that is billed to a subscriber on a collect basis at a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(b) No common carrier shall provide interstate transmission services for any collect information services billed to a subscriber at a tariffed rate unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect service.

§ 64.1506 Number Designation.

Any interstate service described in § 64.1501(a)(1)-(2) shall be offered only through telephone numbers beginning with a 900 service access code.